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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC 01 202 52674

Office: CALIFORNIA SERVICE CENTER

Date:

APR 17 2003

IN RE: Petitioner:

Beneficiary:

Petition: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, as the fiance(e) of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner and the beneficiary had not personally met within two years before the date of filing the petition as required by section 214(d) of the Act. The director further found that the petitioner had failed to establish that he warranted a favorable exercise of discretion to waive this statutory requirement.

Section 101(a)(15)(K) of the Act defines "fiance(e)" as:

An alien who is the fiancée or fiance of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry. . . .

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states in pertinent part that a fiance(e) petition:

shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties *have previously met in person within two years before the date of filing the petition*, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival . . . [emphasis added].

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) on May 29, 2001. Therefore, the petitioner and the beneficiary were required to have met during the period that began on May 29, 1999 and ended on May 29, 2001.

With the initial filing of the petition, the petitioner indicated that he had not met the beneficiary because he could not travel to the Philippines due to health reasons. In support of the petition, the petitioner submitted physicians' letters indicating that he is disabled, wheelchair-bound, unable to propel a manual wheelchair with his left upper extremity, and that it is difficult for him to travel anywhere. In response to the director's notice of intent to deny the petition for failure to meet the statutory requirement, dated September 6, 2001, the petitioner requested an additional sixty days in which to complete a list of scheduled doctors' appointments. As no additional information or documentation was submitted by the petitioner within the sixty days requested, the director denied the petition on November 21, 2001.

On appeal, the petitioner submits a letter stating that he and the beneficiary have communicated by telephone, post, and the internet for the past two and one-half years and are sincere with their plans of marriage. He also asserts that he sends the beneficiary a monthly allowance. In support of the appeal, the petitioner submits a letter from his physician, Dr. [REDACTED] dated December 5, 2001. Dr. [REDACTED] states that the petitioner has been partially disabled for approximately four to five years; has arthritis in his back, hips, arms, and shoulders that limits his mobility; cannot sit for more than 30 to 45 minutes at a time; is precluded from long-distance driving or flying; and needs a power-operated wheelchair for long-distance maneuvering.

Pursuant to 8 C.F.R. 214.2(k)(2), a director may exercise discretion and waive the requirement of a personal meeting between the two parties if it is established that compliance would:

- (1) Result in extreme hardship to the petitioner; or
- (2) Violate strict and long-established customs of the beneficiary's foreign culture or social practice.

The regulation at section 214.2(k)(2) does not define what may constitute extreme hardship to a petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty. Examples of such circumstances may include, but are not limited to, serious medical conditions or hazards to U.S. citizens to travel to certain countries.

In the instant case, the petitioner has provided sufficient documentary evidence to establish that he warrants a favorable exercise of discretion to grant his request for a waiver of the two-year in-person meeting requirement based on extreme hardship to the petitioner. Therefore, the appeal will be sustained. The petition will be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden.

ORDER: The appeal is sustained. The petition is approved.